
(1966) 12 MAD CK 0016
In the Madras High Court

V. Ramiah

APPELLANT

Vs

The State Bank of India

RESPONDENT

Date of Decision : 23-12-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) 80 LW 616 : (1967) 2 MLJ 519

Hon'ble Judges : M. Anantanarayanan, C.J

Bench : Division Bench

Judgement

M. Anantanarayanan, C.J.—The appellant. V. Ramiah, was employed as a Cashier in the State Bank of India, Madras. After a prolonged

enquiry upon charges framed, the Local Board of the Bank, by Proceedings dated 23rd February, 1962, intimated to the appellant that they were

terminating his services under Rule No. 14 of the State Bank of India (Sub-Accountants and Head Cashiers Service Rules), after tendering him

two months' salary, in lieu of notice, as provided for in Clause (1) of the Service Agreement. The appellant instituted W.P. No. 528 of 1962,

before Veeraswami, J., for the issue of a writ of ceitiorari quashing this order upon the grounds shown. In a judgment, in which the respective

contentions, of parties have been elaborately dealt with, the learned Judge held that no case has been made out for interference with this order,

under Article 226 of the Constitution. The appellant has appealed from this judgment.

2. The arguments, presented before us by the learned Advocate-General for the appellant, and the learned Counsel for the respondent Bank (Sri

V.K. Thiruvengkatachari) do involve certain questions of considerable interest, and some significance. They impinge upon the amplitude of our

powers under Article 226 in interfering with orders of this kind, which ex facie are orders terminating an employment under a power derived from

contract, by a statutory body, which, indisputably, has certain functions affecting the public, and also may be said to possess a quasi-Governmental

character. Another of the vital questions is, whether such a Body acts as a Tribunal in this kind of situation, and is bound to exercise its power as

a quasi-judicial act, subservient to the norms of natural justice. A third question is, whether the order of termination, which could be termed the

outcome of a disciplinary proceeding ought to be interpreted as a punishment imposed by the respondent Bank under powers of its disciplinary

jurisdiction, or, as, what the order purports to be, a simple termination under contract. It may be best, even before we proceed into the facts,

which could be compressed into a relatively brief scope, for the purpose of this writ appeal, that these several questions are first formulated.

3. Accordingly, we may first formulate the questions, which arise in this writ appeal, as hereunder:

1. Is the State Bank of India, constituted under the State Bank of India Act, 1955, a "public authority" in law, and an "authority" within the

meaning of Article 226, to whom writs of certiorari, prohibition, mandamus, etc., could issue? In this respect, is the amplitude of the power of the

High Courts under Article 226, wider than the aggregate of the Prerogative writs in the United Kingdom?

2. Is the order of the respondent Bank dated 23rd February, 1962, terminating the employment of the applicant, an order passed purely upon the

power derived from the contract between the parties? If it is, should the appellant be strictly referred to his remedy in common law for damages for

breach of contract, assuming that the termination was wrongful? Or, is the order, however seemingly disguised as an exercise of a power derived

from contract, in substance and variety, a punishment imposed on the appellant in disciplinary jurisdiction?

3. If the order was in disciplinary jurisdiction, and it is conceded that the public authority (respondent bank) was bound to act quasi-judicially, was

the actual enquiry vitiated by a failure to observe the norms of natural justice?

4. What is the character of the State Bank of India Rules, under certain rules of which, notably Rules 39 and 40, the actual enquiry was held? Do

these Rules possess statutory character, or are they purely administrative? Can an infringement of these Rules, or any of them, be canvassed in

Writ Jurisdiction?

5. When can it be held that a "public authority" like the State Bank of India, is bound to act quasi-judicially? What is, the resolution of the apparent

conflict in the case-law, particularly of the United Kingdom, on this aspect?

4. As far as the facts are concerned, a quite brief conspectus will be here sufficient. We shall later deal more elaborately, with the special aspects

of those facts, which require our scrutiny. The starting point of this enquiry was a letter from the Agent of the Madurantakam Branch of the State

Bank of India, enclosing complaints from certain persons, such as, one Inderchand Jail Sowear 2nd another Manakchand Sowear, against the

appellant (V. Ramiah), who was the Head Cashier of. the Bank. Sri Tiruvenkatachari stresses that, in its reply dated 2nd February, 1961, the

Head Office (Madras) did point out that there was a likelihood that such petitioners might be biased, because of the vigilance that might have been

exhibited by the Cashier in the performance of his duties. However, there was a detailed investigation by an Officer of the Bank (K.S.

Vijayaraghavan) and the ultimate outcome was the formulation of the four charges in the charge-memorandum of the record.. These refer to

infringements of Rules 33(1) and 36 of the State Bank of India (Sub-Accounts and Head Cashiers) Service Rules, and, briefly stated, 2 mount to

averments of private dealings by the Officer with constituents of the Bank of Madurantakam in the shape of loans, and issues of post-dated

cheques, which the appellant must necessarily have known would be dishonoured, in view of the actual" balances to his credit. There were several

explanations of the appellant, and there was an elaborate enquiry, in the presence of Sri R.N. Chettur, who, acted as the Tribunal in this respect,

the Secretary and Treasurer, the Investigating Officer, two other Officers, and the appellant. The script of this enquiry occupies a number of pages

of the record. We shall later deal with the specific ground of attack, comprised in the arguments of the learned Advocate-General. After the

findings of the enquiry had been duly submitted to the Local Board, and considered by the Board, the Board purported to terminate the services of

the appellant by means of the letter dated 23rd February, 1962. As the

interpretation of this letter, or memorandum, is one of the major aspects of this appeal, no apology is necessary for setting forth this document alone verbatim here.

5. The letter is as follows:

Dear Sir,

I have to advise that the Local Board, after having given full consideration to your case at its meeting held to-day have come to the conclusion that

although your misconduct deserves the extreme penalty of dismissal from the Bank's services, on grounds of compassion, your services should be

terminated under Rule No. 14 of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules, and have resolved to terminate

your services by giving you two months' salary in lieu of notice, as provided for in Clause 1 of your agreement for service with the Bank.

Accordingly your services stand terminated with effect from to-day and we enclose two payment orders in your favour (1) for Rs. 319-06,

representing the salary and allowances due to you up to late and (ii) for Rs. 1,055-50 representing salary and allowances in lieu of the two months'

notice. Please acknowledge receipt.

6. On the aspect of facts, the argument of the learned Advocate-General (Sri Kumaramangalam) may be tersely set forth. The learned Advocate-

General submits that the enquiry in disciplinary jurisdiction, which culminated in this letter of termination of services, was not in conformity with

principles of natural justice, on certain grounds. The most important of them, are these: (i) The enquiry throughout proceeded on the basis of the

letters written to the Bank of certain private individuals without these individuals offering testimony in person at the enquiry, and subjecting

themselves to cross-examination. These individuals or several of them, had admittedly given subsequent letters to the appellant which he produced

with his explanations, retracting their earlier statements. It is strenuously contended that, even if it be assumed that the subsequent contradictory

letters were due to influence exercised by the appellant as the Bank authorities actually did assume, this is, at the highest, a moral conviction; those

letters, therefore, should not have formed the basis of enquiry; (ii) As the very record, of enquiry shows, the Investigating Officer was not merely

present throughout, but he actually participated in the enquiry, and made

interjections likely to influence the Officer holding the enquiry; such interjections, or questions put to the appellant by the Investigating Officer, are against principles of natural justice; (iii) Apart from other technical grounds taken, it is at least clear from Rule 40(4) that a second opportunity ought to be given to the employee to show cause against the penalty proposed to be inflicted; principle of Lall's case (1945) F.C.R. 103 : (1945) F.L.J. 129 : (1945) 2 M.L.J. 270 This was not done, and this also vitiates the enquiry (iv) The learned Advocate-General strenuously contended that the ultimate memorandum terminating the services of the appellant under Rule 14, the power under the contract, was not a bona fide exercise of that power. It was really a camouflage, a mere outward semblance or mask concealing the true character of the order, substantially a punishment. Hence, this Court ought to interfere, in exercise of its writ jurisdiction, and strike down the impugned order.

7. Per contra, Sri Tiruvenkatachari, for the Bank has taken us through the record, in a very elaborate manner. He has sought to convince us that, even at the outset, the charges were not those of any grave misdemeanour, or of transactions which might otherwise amount to offences, such as misfeasance or malfeasance, or acts perpetrated with a dishonest intention. Naturally enough, the Bank, in its own interest, had imposed a code of conduct or etiquette, Upon its Officers. The good name and the repute of the Bank, depended very much on the strict observance of these Rules. If a responsible Officer, like the Head Cashier, had private dealings, particularly borrowings, with constituents of the Bank, if he himself was permitted to issue post-dated cheques, which could not be possibly honoured, because of lack of funds in his current account, then the interests of the Bank would be gravely jeopardised. The substance of the charges was that the appellant had indulged in conduct subversive of the interests of the Bank and of its high repute with the public. According to Sri Tiruvenkatachari, there was really no failure to observe the principles of natural justice. He has analysed the record, and made comments on portions thereof, to show that the Bank acted fairly and judiciously throughout. The Bank was cautious to investigate whether the complainants were biased against the appellant, because of the appellant's strict performance of duties. The subsequent letters obtained by the appellant from the same

individuals, were patently due to his own efforts to influence them. The earlier letters had been received before the formulation of the charges, and there was no prejudice occasioned by the use of those letters. There was no impropriety at the enquiry, and the ultimate conclusion was reasonable, and supported by the probabilities. In any event, the Bank authorities finally chose the method, not of punishing the appellant for his misconduct, of which they were convinced, but of terminating his services under the power of contract, as the more merciful and humane alternative, considering the past blameless record. Such a termination of services under a power derived from contract, assuming that it is wrongful, cannot possibly be canvassed in writ jurisdiction. The appellant must be referred to his remedy under the common law, in an action for damages.

8. Certain aspects, which seem to have weighed heavily during arguments before the learned Judge (Veeraswami, J.) are now conceded as almost academic, and of no great significance. For instance, the learned Judge was much exercised to discuss the issue whether the State Bank of India was a "public authority, to whom writs could issue under Article 226. After setting forth a passage from 30 Halsbury's Laws of England, Third Edition, page 682, the learned Judge analysed the dicta in *Attorney-General v. Company of Proprietors of Margate Pier and Harbour L.R. (1900)*

1 Ch. 749. But, as he pointed out, that decision was rendered at a time when a rather narrow view was adopted regarding the kind of undertaking that could be termed a "public authority" as there were certain Acts of Parliament, under which even commercial concerns had come into existence, and the concept of Governmental function was then relatively restricted. The case-law itself shows marked subsequent development.

To-day, it is common-place that a democratic welfare State may undertake what would be regarded in the nineteenth century as functions purely limited to private industrial enterprises; our own amendment of Article 19(6)- Article 19(6)(ii)- investing the State, or a Corporation owned or controlled by the State, with a power to embark on such enterprises, mirrors the changing concept. The learned Judge then referred to *Firestone Tyre and Rubber Co. (s.s.) Ltd. v. Singapore Harbour Board L.R. (1952) A.C. 452* as illustrating "the departure from the old view". He has also referred to *Criffiths v. Smith L.R. (1941) A.C. 170*, and *G. Narayanaswami Naidu*

Vs. C. Krishnamurthi and Another, , which dealt with the Life Insurance Corporation of India. We might further cite Dr. T.C.M. Pillai Vs. The Indian Institute of Technology, , and refer to the catena of decisions cited at the Bar wherein, Universities and various State-aided Corporations have received legal recognition as "public authorities".

Actually, during the arguments, it was clearly perceived that this aspect of the matter was largely academic. The development of the case-law in India, particularly of the Supreme Court, leaves us in no doubt that such "authorities", as the State Bank of India, which derive their existence from statute, are largely Government controlled, and in which the State has a considerable proprietary interest, are "public authorities". We think it is sufficient to point out that there are at least two decisions of High Courts, namely Baleshwar Prasad Vs. Agent, State Bank of India, , and Suprasad Mukherjee Vs. State Bank of India and Another, , in which the proposition, with reference to the State Bank of India, was not even doubted.

9. In the light of these facts, we do not think that it is necessary to further discuss the criteria for this test, argued by Sri M.K. Nambiar before the learned Judge (Veeraswami, J.), namely, whether the organisation derives its existence from statute, whether it is controlled by Government, and its functions are, partly or wholly, the functions of Government. Sri Tiruvenkatachari, no doubt, contends that even commercial organisations, with profit sharing and the earning of profits as essential components of their objectives, and which thus belong to the private sector, if we may so term it, may owe their existence to statutes; certainly, several did so in the United Kingdom. But the point is not this. The point is that, as far as the State Bank of India is concerned, as the learned Judge (Veeraswami, J.), has conclusively shown, by an elaborate analysis of the State Bank of India Act, 1955, which need not be recapitulated here, the Bank is largely State owned, several of its functions are controlled by Government, it has to obey the directives of the Government in vital respects, and even apart from its assets, its bodies of management are partly Governmental in composition. Under those circumstances, there can be no doubt that the State Bank of India is a "public authority"; indisputably, it is an "authority" within the scope of Article 226 of the Constitution.

10. As regards the related question concerning the amplitude of the power of High Courts under Article 226, we are in entire agreement with the learned Judge, Veeraswami, J., that this cannot be merely disposed of as the aggregate of the Prerogative Writs of the United Kingdom. The terms are more comprehensive, the amplitude is wider, and the clear intendment of Article 226 is not merely to write the English Prerogative Writs into the Constitution of India. No further discussion of this aspect, however, appears to be necessary, except to sound the cautionary note that, in deciding the question of jurisdiction, the English Cases, though indisputably of great value and assistance, may not be literally followed, as exhausting the content of our own power.

11. We shall deal later with the very vital question, which, in a certain sense, is the crux of this case, namely, whether the actual order terminating the services of the appellant, that we have set forth earlier, is what it claims to be, that is, an exercise of the power under a contract to dispense with the service of the employee, or is a punishment. For, Sri Tiruvenkatachari is unable to dispute that, if the order is, in core and substance, a punishment in disciplinary jurisdiction, then the respondent Bank would have to act quasi-judicially; it must certainly observe the norms of natural justice. If it has not done so, the order is liable to be struck down, even if the State Bank of India Rules are not statutory in character. For, as pointed out in the Full Bench decision in *Nagarathnammal v. Ibrahim Sahib* ILR (1965) Mad. 460 : (1965) 2 M.L.J. 49, by Balakrishna Ayyar, J., a statutory body like the Board of Revenue in that case, which has framed rules for its guidance which are administrative and not of the character of delegated legislation, nevertheless, cannot choose to infringe such rules in an arbitrary manner. The learned Judge stated:

In other words, the Board cannot ignore the existing rule by treating the order made in that particular case as amendment of the rule. That the Government or the Board has the power to amend the rule should make no difference, both are bound to dispose of the matters that come up, before them in accordance with the rules at the time in force on the subject.

This aspect, again, therefore need not receive any elaborate treatment, though it has been dealt with by Veeraswami, J., at some length.

12. Equally, the learned Advocate-General does not dispute that, if the order

terminates the employment, by virtue of the contract, the matter is at an end, as far as writ jurisdiction is concerned, for, as we shall presently show, there is a plethora of authorities upon the dictum that a breach of contract by an employer, even if the employer be a statutory body, can give rise only to a claim in damages, and cannot be canvassed in writ jurisdiction. Some arguments appear to have been pressed before Veeraswami, J., that Rule 14, which is explicitly to the effect that the Bank can terminate this employment, under the contract, does not justify the actual termination by the tendering of two months' salary in lieu of notice, thus reading Clause (i) of the Service Agreement with the Rule; but, this was not adverted to before us,, nor was the power to terminate under the contract, seriously disputed.

13. Before proceeding to the main argument, the interpretation of the true character of the final memorandum, and the case-law cited on that aspect, we may conveniently deal with the question of the resolution of apparent conflict in the case-law on the scope of our interference, in a situation of this kind. It may be best to condense the argument of Sri Tiruvenkatachari on this aspect, before attempting to resolve the conflict.

According to Sri Tiruvenkatachari, there would appear to have been some misconception, even with regard to the precise scope of the dicta in

Rex v. Electricity Commissioners L.R. (1924) 1 K.B. 171. While the passage in the judgment of Atkin, L.J., relating to the controlling jurisdiction

of the King's Bench Division, "'Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and

having the duty to act judicially, act in excess of their legal authority'", has received wide notice, and is almost a classic formula, equal attention, has

not been paid, according to him, to the dicta of Bankes, L.J., in the same decision that, "'As statutory bodies were brought into existence exercising

legal jurisdiction, so the issue of the writ came to be extended to such bodies'". In other words, there are several pre-requisites for the exercise of

this jurisdiction even with regard to statutory bodies. There must be a decision, that decision must relate to the exercise of some function of a legal

character, and it must affect some right. Further, according to learned Counsel, the scope of this interference in writ jurisdiction is, more or less,

defined by the doctrine of ultra vires. Where a particular act or exercise of power

or function exceeds legal authority, infringes some legal

restriction, is either incompetent or mala fide or, being frankly quasi-judicial contravenes some norm of natural justice, it may be struck down; but

not otherwise. Learned Counsel has stressed the dichotomy in the case-law, particularly in the United Kingdom, on this particular point. It was also

noticed by Ramachandra Iyer, C.J., in *Dr. T.C.M. Pillai Vs. The Indian Institute of Technology*, in the brief form that *Vine's case* (1956) 3 All

E.R. 939 : L.R. (1957) A.C. 488, was not a straight forward case on the Law of Master and Servant, but on infringement of statute, taking away

the very basis of the decision, while *Barberis Case* (1958) 1 All E.R. 322, was a mere breach of contract, remediable only in an action for

damages. The following incidents in the developments of the case-law, on this aspect, would appear to be of interest and significance.

14. In *L.R. Board v. J.E.I. Works* AIR 1949 P.C. 129, followed in *The Sree Meenakshi Mills Ltd. Vs. The State of Madras and Others*, the

Judicial Committee observed with reference to the jurisdiction of the Labour Relations Board, as follows:

The Jurisdiction of the Board... is not invoked by the employee for the enforcement of his contractual right; those, whatever they may be, he can

assert elsewhere. But his reinstatement, which by terms of his contract of employment might not by themselves justify, is the means by which labour

practices regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace is secured. It is in the light of this new

conception of industrial relations that the question to be determined by the Board must be viewed...

15. But this is true of the law of industrial relations and disputes alone, and according to learned Counsel, this cannot be invoked elsewhere. It is

obvious that, as far as the Law of Master and Servant is concerned, there cannot be specific performance of a contract of employment, nor can a

continuance of service be constrained. Analogies drawn from the Law of Industrial Disputes, are apt to be highly misleading. the judgment of Lord

Morris in *Vidyodaya University v. Silwa* (1964) 3 All E.R. 865, which is instance of the refusal to interfere, even with respect to a statutory body,

like the University of Ceylon, where it exercises a power derived from a contract of employment, will be found set forth a select anthology, if we

may so term it with respect, of the dictation this aspect. Lord Morris himself observed that:

the law is well settled that, if, where there is an ordinary contractual relationship of Master and Servant, the Master terminates the contract, the

servant cannot obtain an order of certiorari. If the master rightfully ends the contract, there can be no complaint; if the master wrongfully ends the

contract, then the servant can pursue a claim for damages.

The judgment then quotes Lord Reid in *Hidge v. Baldwin* (1963) 2 All E.R. 66 to this effect.

There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any

reason or for none. But if he does so in a manner not warranted by the contract, he must pay damages for breach of contract. So, the question in a

pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the

facts emerging at the trial prove breach of contract

In *Vine's Case* L.R. (1957) A.C. 488 : (1956) 3 All E.R. 939, Viscount Kilmuir, L.C., observed (at page 500):

This is an entirely different situation from the ordinary master and servant case; there if the master wrongfully dismisses the servant, either summarily

or by giving insufficient notice the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the

register being, in law, a, he continued to have the right to be treated as a registered dock worker with all the benefits...

Lord Keith observed in the same judgment (at page 507):

Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant.

Dismissal might be in breach of contract and so unlawful, but could only sound in damages.

16. Apart from this case, the leading decisions on this side of the line are: *Francis v. Municipal Councillors, etc* (1962) 3 All E.R. 632, *Barber v.*

Manchester Hospital Board (1958) 1 All E.R. 322. *Vine's Case* L.R. (1957) A.C. 488 : (1956) 3 All E.R. 939, will have to be distinguished, on

its special facts, and in *Barber's Case* (1958) 1 All E.R. 322 we have this notable pronouncement of *Barry, J.*, at page 331):

Here, despite the strong statutory flavour attaching to the plaintiff's contract, I have reached the conclusion that in essence it was an ordinary contract between master and servant and nothing more.

17. It is indisputable that a statutory body may employ persons under contract, and that, so long as it is exercising the function or power under contract, or enforcing an obligation under contract, it is acting purely like a private individual. This criterion of distinction is well-marked, and it cannot be argued except where the act of the statutory body is in breach of a mandatory obligation imposed by the statute, when a statutory body terminates an employment under contract, that the act is liable to be canvassed in writ jurisdiction. It appears to us that this distinction can be most clearly brought out, not in our own words, but by setting forth two passages, one from Vidyodaya University Case (1964) 3 All E.R. 865 , and the other from the decision of the Supreme Court in S.R. Tewari Vs. District Board Agra and Another, . That the Board of Directors of a Co-operative Society is not a "Tribunal" with authority to determine the rights of parties, though the Directors may discharge functions entrusted to them by certain Regulations, was held in Lakshmiah v. Sriperumbudur Taluk Co-operative Marketing Society (1961) 2 M.L.J. 279 The passages of the two decisions that we have earlier referred to, are as follows:

In a straightforward case where a master employs a servant the latter is not regarded as the holder of an office, and, if the contract is terminated, there are ordinarily no questions affecting status or involving property rights. It becomes necessary, therefore, to consider whether in the present case there are any features which suggest a relationship other than that of master and servant. It was submitted on behalf of the respondent first that, if someone has the power to determine what the rights of an individual are to be, then a duty to act judicially arises simply from the nature of the power, and secondly, that where the power is a power to dismiss from an office (and it was contended that the respondent could be said to be the holder of an office) and to dismiss not at discretion but by reason of misconduct, then there is a duty to act judicially. In their Lordships' opinion the first of these submissions is too wide and cannot be accepted. The second calls for an examination of the position which the respondent occupied, having regard to the facts concerning his appointment and having

regard to the provisions of the Act of 1958. It was contended that the respondent had certain statutory rights and that certiorari could be granted in order to enforce them and in order to ensure obedience to the provisions of the Act." Vidyodaya University Case (1964) 3 All E.R. 865 .

The other passage is to the following effect:

Under the common law, the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ.

But this rule is subject to certain well-recognised exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is

dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to

continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law, jurisdiction of the labour and industrial

tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognised. The Courts are also invested with the

power to declare invalid the act of a statutory body, if by doing the act the body, has acted in breach of a mandatory obligation imposed by statute

even if by making the declaration the body is compelled to do something which it does not desire to do." S.R. Tewari Vs. District Board Agra and

Another, .

18. On this aspect, therefore, it does appear that the dichotomy is itself referable to the question whether a statutory body, being bound to act

quasi-judicially, infringes any norm, or acts incompetently, or in excess of a power under a binding law; in brief, the doctrine of ultra vires. But

where the statutory body acts in the same way as any private individual may do, by terminating the employment under contract, by borrowing

money or lending money, or as a tenant or a landlord of premises, the ordinary rule would be that the common law remedies available to the

aggrieved party would exclude writ jurisdiction, precisely as in the case of a private individual. Sri Kumaramangalam appeared, at one stage of the

arguments, to be somewhat widening the scope of this proposition, by this reference to the following passage in "Administrative Law" by J.F.

Carner (1963 Edition) at pages 96 to 98. The passage runs as follows:

Apart from express statutory provisions, review by the Courts of a decision of an administrative agency has always been based, in our legal

system, on an allegation that the agency has exceeded its powers, has acted ultra vires. This is fundamentally a simple doctrine, based on the common law. All Governmental power must be recognised by the law especially where that power is exercised in some manner which affects adversely the property or the liberty of a subject, and that recognition is given only to power that emanates from a single source, the Queen in Parliament. Breach of "natural justice" (as understood by the common law and to be hereafter explained), lack of jurisdiction, faulty procedure, bad faith, have all been put forward in certain contests as justification for judicial intervention, but all of these, in so far as they may be recognised at all by the Courts, are really but specialised applications of the ultra vires doctrine; Parliament did not and could not have intended to confer power that could be exercised in such a manner as to flout "natural justice." The various aspects of ultra vires can nevertheless be conveniently considered in this manner, if for no other reason than that this traditional treatment enables the principles established in the many decisions of the Courts to be considered in an orderly fashion. It is in this field of the extent of Governmental powers that the Courts have a traditional and important part to play in the control of administrative agencies. Their task is to contain administrative activity within the bounds of delegated power; to apply to administrative action the test of "legality". It must first be appreciated that the decisions of an administrative agency in respect of which judicial review is sought may themselves be of various kinds. Thus, a local authority, a Minister or an independent public corporation, may have made a formal order, such as compulsory purchase order, have granted or refused a licence or certificate, or imposed conditions in a licence or they may have decided to expend public money on some project to which exception is taken. The decision questioned may be one of a large number of petty administrative acts, from the writing of a letter, or the publication of minutes containing allegedly defamatory material to the breach of an alleged contract involving high Government policy. Again, the act in question may be administrative in nature, or it may be "quasi-judicial," it may be a judicial decision of an administrative tribunal such as a furnished houses rent Tribunal, or a legislative act such as the making of a by-law by a local authority or a statutory corporation, or the giving of

general or particular instructions to local authorities in Ministerial circulars or memoranda, which may themselves be a form of delegated or sub-delegated legislation.

The principles according to which the Courts are prepared to apply the ultra vires doctrine and review the exercise of the administrative judicial or

legislative acts of an administrative agency are as follows:

- (a) Breach of the principles of "natural justice";
- (b) Excess of power (or "substantial" ultra vires);
- (c) Errors of procedure;
- (d) Palpable errors of law;
- (e) Failure to perform a duty;
- (f) Bad faith; or abuse of power.

19. But, in our view, this passage is not in any sense radically different from the submissions of Sri Tiruvenkatachari for the respondent Bank. In

other words, the scope of the doctrine of ultra vires is unambiguous, and the dichotomy in the case-law is perfectly explicable. Therefore, if the

order in the present case is to be construed as a bona fide exercise of the power derived from contract to terminate the employment, it cannot be

struck down in writ jurisdiction. It is not as if the appellant is without his remedies. He has his remedies in common law, for damages for wrongful

dismissal, and, in a given case, such damages may indeed be considerable. He has a perfect right to contend that, if the Bank proposes to exercise

its power under the contract to terminate his employment, simpliciter, it should not couple this act with observations on the alleged misconduct of

the appellant, which is itself the conclusion of an enquiry, allegedly vitiated by a failure to observe the principles of natural justice. In other words,

the Bank may certainly dispense with the services of its employee, under a contract. It may not even be constrained to give him a certificate, or a

testimonial of unblemished conduct. But it cannot virtually make averments against the conduct of the employee, when dispensing with his service

under contract. If it does so, that may amount to wrongful dismissal or a breach of contract, and be actionable under common law. Unless the

interpretation is sustained that the final order is not this, but merely a mask for a punishment imposed in disciplinary jurisdiction, the refusal of the

learned Judge (Veeraswami, J.) to interfere will have to be supported by us, as perfectly justified.

20. It is in this context that the learned Advocate-General has heavily relied on the following decisions, particularly of the Assam Oil Company Vs.

Its Workmen, , S.R. Tewari Vs. District Board Agra and Another, , Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu

University and Others, Certain observations in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta

and Others, , Calcutta Dock Labour Board Vs. Jaffar Imam and Others, , Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport

Corporation and Another, and Union of India Vs. T.L. Dakshinamurthy, , a decision to which one of us was a party. Certain of these cases are of

great importance upon this question of interpretation of the substance of the order, and, hence, we think it is essential to notice them in a little more

detail.

21. The most helpful case for the appellant, would appear to be Assam Oil Company Vs. Its Workmen, . In that case, the services of a certain

Miss Scott were dispensed with, after it had been pointed out to her that her faults had not been corrected, and that her performance during her

service was not upto the standard required. Apart from the question whether Miss Scott was a "workman" u/s 2(s) of the Industrial Disputes Act,

1947, the power under contract was relied on. Upon the question whether the order of termination was really under the contract, or was merely a

semblance for a punishment for misconduct, Gajendragadkar, J., (as he then was) observed as follows (at page 1267):

If the discharge has been ordered by the employer in bona fide exercise of his power, then the industrial tribunal may not interfere with it; but the

words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the industrial tribunal would be

entitled to go behind the words and the form and decide whether the discharge is a discharge simpliciter or not. If it appears that the purported

exercise of the power to terminate the services of the employee was in fact the result of the misconduct alleged against him, then the tribunal will be

justified in dealing with the dispute on the basis that despite its appearance to the contrary the order of discharge is in effect an order of dismissal.

The exercise of the power in question to be valid must always be bona fide. If the bona fides of the said exercise of the power are successfully challenged, then the industrial tribunal would be entitled to interfere with the order in question. It is in this context that the industrial tribunal must consider whether the discharge is mala fide or whether it amounts to victimisation or an unfair labour practice, or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power conferred by the contract. In some cases the employer may disapprove of the trade union activities of his employee and may purport to discharge his services under the terms of the contract. In such cases, if it appears that the real reason and motive for discharge is the trade union activities of the employee, that would be a case where the industrial tribunal can justly hold that the discharge is unjustified and has been made mala fide. It may also appear in some cases that though the order of discharge is couched in words which do not impute any misconduct to the employee, in substance it is based on misconduct of which, according to the employer, the employee has been guilty; and that would make the impugned discharge a punitive dismissal. In such a case fair play and justice require that the employee should be given a chance to explain the allegation weighing in the mind of the employer and that would necessitate a proper enquiry. Whether or not the termination of services in a given case is the result of the bona fide exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstances of each case...

22. The next case that has to be noted is that to which we have earlier made reference, namely, S.R. Tewari Vs. District Board Agra and Another, . Very briefly stated, that was a case in which the Supreme Court declined to interfere, because it was a factual question whether the order terminating the employment was Under contract, or really of the nature of dismissal as punishment, and the question had neither been raised nor explored in the High Court on proper pleadings. The case proceeds no further than this. After referring to Vines" case L.R. (1957) A.C. 488 : (1956) 3 All E.R. 939, and after holding that the District Board had powers to determine the employment under contract, their Lordships stressed

that the true distinction was whether the order was a bona fide exercise of the power under the contract, or was merely that in form, and, in reality,

was a punishment of dismissal. They observed in *S.R. Tewari Vs. District Board Agra and Another*, :

It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order.

The form may be briefly to camouflage an order of dismissal for misconduct, and it is always open to the Court before which the order is

challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form merely of

determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely

because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee.

23. *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, is a brief judgment, in which it was held, on the

facts of that case, that the order of termination was bad in law, since it contravened the provisions of Clause (4) of the Regulations, and also the

principles of natural justice. *Calcutta Dock Labour Board Vs. Jaffar Imam and Others*, , is of value as showing that the relevant statutory provision

and the Principles of natural justice should have been followed, and a proper enquiry held, since it was indisputable that the appellant Board, in

termination the employment of its employees was exercising authority and power of a quasi-judicial character This decision also relates to the

sphere of industrial disputes, since the disciplinary proceedings were initiated under the *Calcutta Dock Workers (Regulation of Employment)*

Scheme, and the impugned orders were held vitiated by the infirmity, that mere preventive detention had been equated with conviction for a

criminal offence. The decision in *Life Insurance Corporation of India v. Sunil Kumar Mukherjee* (1964) 34 Com. Cases 299 : (1964) 1 Com. L.J.

94 : (1964) 1 S.C.J. 272, again relates to an invalid termination of contract, pertinent to an industrial dispute *Board of High School and*

Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , is authority or the view that if a statutory body has power to do

an act, which will prejudicially affect the subject, them, although there are not two parties, apart from the authority, and the contest is between the

authority and the subject, the final determination of the authority will yet be a quasi-judicial act, provided, the authority is required to act judicially.

This decision does not apply to the facts of the present controversy for it is indisputable that if the determination be for misconduct, in substance

and verity the matter is at an end. The authority was bound to act quasi-judicially and in conformity with the Rules framed by itself for observance in

such matters of disciplinary jurisdiction; if the principle, of natural justice were infringed, the writ should issue.

24. Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others, , is of considerable interest for it shows how

the differentiating factor that we have been discussing, comes into play on given facts. That was a case in which the University adopted a special

procedure, provided for in disciplinary jurisdiction, under statute 30. The University Act (Banars Hindu University Act) expressly made the

Ordinances subject to the statutes, so that, in the case of conflict, the Ordinances had to recede, and could not prevail. In essence, what their

Lordships held was that, after having resorted to the power under the Statute, and followed a special procedure, the University could not abandon

its own action, and terminate the services under the general power of the Ordinance. This itself shows that where, in a particular case, it is the

power of contract simpliciter which is being exercised, the remedy may lie elsewhere. Finally, we may note that Union of India Vs. T.L.

Dakshinamurthy, , was a decision relating to the Railway Establishment Code and its Rules. On the facts of that case, and, more specially, in the

context of the final withholding of the salary under orders of suspension, this Court held that a particular order of termination of service, through in

form it was such, was really a punishment. Actually the punishment was inflicted in contravention of Article 311 of the Constitution, and the Court

interfered. Admittedly, Article 311 does not apply to the present case.

25. In our view, an analysis of the order, in the setting in which it was made, and on a fair interpretation of its purport and tenor, can lead only to

the conclusion that it is really what it ex facie claims to be, an invocation of the power derived from contract to terminate the services of the

appellant. As the learned judge, (Veeraswami, J.) rightly observed, if we may say so with respect, the occasion for the exercise of the power is

one thing, and the basis for the act of termination is quite another. Certainly, without the prior facts of the charges and the enquiry, and the ultimate conviction of the relevant authority that the charges had been established, the act of termination under the contract is not explicable. But, in our view, the motive which led to the exercise of a function, has to be carefully distinguished from the nature of the act. It is very important to note, as the learned Judge has stressed, that the Local Board, in exercising this power of termination, does not state that it agrees with the findings of the Enquiry Officer. The learned Advocate-General has strenuously contended that the basis of the order, is the enquiry and the finding of misconduct. Therefore, according to him, though the order purports to terminate the services under contract, it is really a punishment. We think that this line of reasoning conceals a fallacy. Any employer, even a statutory body, may initiate a proceeding, hold an enquiry, and come to certain conclusions. But, at that stage, it may be faced with the choice of two alternatives. It may choose to punish the employee on a finding of misconduct, or it may choose, for what may seem to the authority to be valid reasons, to terminate the employment under contract, instead.

26. We are unable to see how this choice, of one of two alternatives, can be possibly denied. If the organisation chooses the alternative of terminating the employment under contract, how can it be contended that it meant something else, unless, indeed, there is some mala fide exercise of power? We do not think that an argument is sustainable that, wherever the termination, under contract, is motivated by some prior enquiry or some investigation, it is not bona fide. This will lead to the absurd consequence that the power to terminate an employment under contract, is taken away, the moment the employer thinks that the employee is undesirable. From all that we can gather from the record, it may be perfectly true that the employer organisation thought of both the alternatives, and decided on the alternative of terminating the employment under the power of contract, instead of imposing a punishment, as more merciful, and justified by the prior unblemished record. It may even be that, on legal advice obtained by the Bank authorities, the alternative of exercising the power under the contract was chosen. We have nothing to do with the motive; we have only to see whether the order is what it claims to be, or is merely a semblance, masking some ulterior objective.

27. We cannot find anything to support this, either in the documents of the record, or in the manner in which the appellant was dealt with, as

regards his pay and allowances. We must, therefore, conclude that the order is the result of the exercise of power under the contract, as it purports

to be. Certainly, it may be a wrongful termination, and the appellant is not without his remedies in common law, if that be so.

28. In this view of the matter, we do not propose to focus much attention upon other decisions cited at the bar, or the subsidiary issues. But, on the

aspect of the facts relating to the enquiry, we must agree with the learned Advocate-General that, however, careful and bona fide, the conduct of

the respondent-Bank might have been, the enquiry itself has infringed certain principles of natural justice. The Bank might have been perfectly

reasonable in arriving at the moral conviction that the subsequent letters obtained by the appellant from the same complainants, might have been

induced. But natural justice did require that, so long as there was a possibility that the retracted statements may be the truth, those individuals

should have been examined at the enquiry, and the appellant furnished an opportunity for cross-examining them. Again, the same remarks, would

apply to the active participation of the Investigating Officer at the enquiry, particularly in the form of interjections and of questioning of the

appellant, which might be calculated to prejudice the Tribunal, in this case the Secretary and Treasurer. Even more indisputably, the Rules were not

followed, when the appellant was not asked to show cause against the proposed punishment, by giving a second opportunity. Actually, this

probabilises our interpretation that, in final outcome, the authorities chose, instead, not to dismiss the appellant for misconduct, but to terminate his

services under the power derived from contract.

29. We must, therefore, hold that the decision of Veeraswami, J., must be confirmed, and that the Writ Appeal should be dismissed. The appellant

may be able to contend, if he chooses to bring in a suit for damages now, that he has been litigating bona fide in the Courts throughout, and that this

saves limitation in respect of such a suit. We are not giving our opinion upon such a plea now. The parties will bear their own costs.